House Calls, Inc., House Calls Home Health Agency, Inc., House Calls Home Health Care, Inc., Northeast Diagnostic Services, Inc., and Dura-Med, Inc. *and* District 1199P, National Union of Hospital and Health Care Employees, AFL–CIO. Cases 4–CA–18105–1, 4–CA–18105–3, 4–CA–18153, 4–CA–18153–3, and 4–CA–18153–4

August 26, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On September 20, 1990, Administrative Law Judge Thomas A. Ricci issued the attached decision. The Respondent filed exceptions and a supporting brief,[1] and the General Counsel filed cross-exceptions, a supporting brief, and an answering brief.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] as modified, to modify the remedy, and to adopt the recommended Order as modified and set forth in full below.

1. The complaint alleges that Lelia Corcoran was an agent of the Respondent within the meaning of Section 2(13) of the Act. The judge found that she was a supervisor, but failed to address specifically the agency allegation.

Under Board law, the test for agency is whether, under all the circumstances, an employee would reasonably believe that the alleged agent was speaking for management and reflecting company policy. *Lovilia Coal Co.*, 275 NLRB 1358, 1372 (1985). Further, elected or appointed officials of an organization are presumed to be agents of that organization clothed with apparent authority. *Nemacolin Country Club*, 291 NLRB 456, 458 (1988), enfd. 879 F.2d 858 (3d Cir. 1989).

The Respondent is principally owned and managed by John Corcoran, and Lelia Corcoran is his mother. She performs billing and bookkeeping work for the Company, is a member of the board of directors, and has loaned money to the Company on several occasions to meet the payroll. The employees were aware of these loans. In addition, her statements to employees were consistent with the Respondent's antiunion stance, as expressed by its principal officer, John Corcoran. Under all the circumstances, particularly her position on the board of directors, we find that employees could reasonably conclude that Lelia Corcoran's statements reflected the views of the Respondent, and that she is an agent under the Act.[5]

The judge found that the Respondent violated Section 8(a)(1) by Lelia Corcoran's interrogating employees and threatening to close the business, and we agree with these findings. The complaint also alleges that she unlawfully solicited complaints and grievances and threatened to discharge employees and cease financial contributions to the business. The judge did not address these additional allegations.

The uncontradicted evidence shows that Lelia Corcoran stated to employee White that she wanted to know who started the Union and that she wanted them ''out of there.'' We find this statement was an unlawful threat to discharge the employees who started the Union.

Lelia Corcoran also said to White that, if the people were so unhappy, why did they not go to John Corcoran and say they had a problem. We find that her statement unlawfully implies that the employees' complaints and grievances would have been remedied without the need for a union.[6]

Lelia also stated that she would not contribute any more money to the business until she discovered which employees were involved with the Union. In light of her repeated rescues of the company payroll, we find this statement constituted a threat of layoff or business closure.

2. The complaint alleges that Anne Marie Gernhart was an agent of the Respondent and that she unlawfully engaged in direct dealing with employees by soliciting them to enter into individual employment contracts with attendant unilateral changes in wages and benefits. The judge found that her conduct resulted in unilateral changes, but failed to find that Gernhart was the Respondent's agent or that her conduct constituted unlawful direct dealing.

[1] The Respondent filed a motion to reopen the record and a request for oral argument. We deny the Respondent's motion to reopen the record because it does not, as required by Sec. 102.48(d)(1) of the Board's Rules, ''state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result.''

We deny the Respondent's request for oral argument because the exceptions and briefs adequately present the positions of the parties.

[2] The General Counsel filed a motion to strike the Respondent's exceptions. Although the Respondent's exceptions do not fully comply with the Board's Rules, they are not so deficient as to warrant striking.

The General Counsel's motion to correct the transcript is granted.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] We agree with the judge that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging Jacqueline Shatrowskas. We agree that the Respondent's contention that she would have been laid off regardless of her union activities is without merit, but we do not rely on the judge's statement that testimony concerning earlier discussions about laying off Shatrowskas is meaningless.

[5] In light of our finding that Lelia Corcoran is an agent of the Respondent, we find it unnecessary to pass on the judge's finding that she is a supervisor.

[6] *Impact Industries*, 285 NLRB 5 fn. 2 (1987), remanded on other grounds 847 F.2d 379 (7th Cir. 1988).

The record establishes that, John Corcoran instructed Gernhart, an office manager and secretary for the Respondent, to solicit the hourly paid employees to sign individual employment contracts to do the same work on a fee-per-visit basis with no benefits. Gernhart testified that Corcoran said he wanted to retain contract employees ''so he would not have to have the union.'' Employee Debbie Brennen testified that Gernhart strongly encouraged her to accept the conversion to an individual employment contract and told her that Corcoran wanted to get rid of the union supporters and rebuild the business with contract workers.

The evidence clearly establishes that Corcoran instructed Gernhart to enter into individual contracts with employees. When a principal of an employer has instructed an individual to deal on its behalf, that individual has actual authority to carry out such instructions. See *Alliance Rubber Co*., 286 NLRB 645 (1987).

Although the judge's recommended Order and notice cover the direct-dealing allegation, he omitted a finding of direct dealing in his discussion and conclusions of law. We find that by bypassing the Union and dealing directly with employees, the Respondent has engaged in direct dealing in violation of Section 8(a)(5) and (1) of the Act.

The judge failed to include a provision in his remedy concerning the unlawful individual contracts. We shall amend the remedy accordingly.

3. The complaint alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to pay the employees for the Memorial Day holiday. The judge failed to address this allegation.

The uncontradicted evidence shows that Fiscal Supervisor Irene Whitlock, who was found to be a supervisor by the judge, told an employee that she and Lelia Corcoran had been prepared to pay employees for the Memorial Day holiday, but, because the Union came in, they would not do so. It is well settled that an employer's denial of holiday pay because of employee union activity violates Section 8(a)(3) and (1) of the Act[7] Thus, we find in these circumstances that the Respondent has admitted that its failure to pay holiday pay was motivated by the Union's organizing campaign and, therefore, violated Section 8(a)(3) and (1) of the Act.

4. The complaint alleges that John Corcoran had unlawfully threatened employees with unspecified reprisals because they registered complaints against the Respondent with the United States Department of Labor. The judge found that on June 12, 1989,[8] during Corcoran's discussion with the Labor Department investigator, Corcoran was advised that he was behind in his overtime and wage payments. In employee Vukovich's presence, Corcoran became angry and stated that, if the employees ''screwed him,'' he would ''screw them.'' The judge found this statement was not a violation of the Act because it was ''natural'' for an owner ''to feel concerned'' when ''the government examines his books'' and because the General Counsel had not adduced any evidence concerning how the investigation came about or who initiated it.

Contrary to the judge, we find that Corcoran's statement constituted an unlawful threat of reprisal. Regardless of who, in fact, initiated the Labor Department investigation or how it came about, it is clear that Corcoran believed that the employees were responsible for it. Further, it is well established that the Act ''protects employees . . . when they seek to improve working conditions through resort to administrative . . . forums . . . .'' *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565–566 (1978). Therefore, Corcoran's threat to retaliate against employees for their perceived protected concerted activity violated Section 8(a)(1) of the Act.[9]

5. The judge found no merit in the complaint allegation that Corcoran violated Section 8(a)(3) and (1) by instituting a policy which prohibited employees from making or receiving telephone calls while at work. He found that the Respondent was motivated by lawful cost-saving considerations in instituting this policy.

On June 12, after the meeting with the Labor Department investigator, Corcoran instructed Vukovich to type a memorandum stating, ''There will be no personal phone calls in or out of the office.'' It was signed by Corcoran and posted on the bulletin board. Employee Jean Parry testified that at a meeting with employees, Corcoran informed them that the reason for the change was ''because of the lies that were told to the Labor Department with respect to people not getting their lunches.'' Corcoran's affidavit stated that he had planned the change since October 1988, yet he failed to make the change for 8 months, until he became angry at the employees because of their concerted and union activities. Indeed, in that same affidavit Corcoran also stated that he ''implemented some of the new policies at that time because the Labor Department violation was the straw that broke the camel's back,'' thus tacitly admitting that the change in the telephone policy was of recent vintage.

Contrary to the judge, we find that the change was discriminatorily motivated. Corcoran's own affidavit establishes that the timing of the change was not a coincidence. Following so closely on the heels of Corcoran's threat to ''screw'' employees, it was clearly a response to the perceived group complaints to the Labor Department, as well as the ongoing union organizational campaign. Accordingly, we conclude that the Respondent violated Section 8(a)(3) and (1) by in-

[7] *Programming & Systems*, 275 NLRB 1147 (1985); *Lyman Steel Co*., 249 NLRB 296 (1980).

[8] All dates are in 1989.

[9] *Jones Plumbing Co*., 277 NLRB 437, 441 (1985).

stituting a policy that employees could no longer make or receive personal phone calls while at work.

6. The complaint alleges that John Corcoran unlawfully interrogated Deborah Vukovich about her union activity. The judge failed to make any factual or legal findings concerning this allegation.

Vukovich testified, without contradiction, that on June 12, Corcoran accused her of reporting to the unemployment office that Corcoran's wife was collecting unemployment while being paid ''under the table'' by House Calls and told her that some employees had said that she started the Union. When Vukovich asked who said she had started the Union, Corcoran said, ''Why, are you telling me you did start the Union?'' When Vukovich denied it, Corcoran pointed out that she was the Union's primary witness at the NLRB joint conference.

We find that Corcoran coercively interrogated Vukovich about her union activities in violation of Section 8(a)(1). The conversation was particularly coercive because it was with the top company official, there was no legitimate reason for Corcoran's probing into Vukovich's union sympathies, and the interrogation occurred in the context of other unfair labor practices, most committed by Corcoran himself.

7. The complaint alleges John Corcoran unlawfully promised employees improved terms and conditions of employment and threatened to cut the wages of nonunit employees. The judge made no finding concerning these allegations.

On June 14, nonunit employees Vukovich and Stefanski asked Corcoran if they could change their lunch hours. He replied that he could change the lunch hours, but it depended on the Union, that ''if the Union did not get in, the policies that he made would go.'' Corcoran also said that, if the Union got in, the salaries of Vukovich, Stefanski, Ludden, and Coley would be cut, but that the salaries of Whitlock, his mother, and himself would remain the same.

We find that Corcoran's statement that he would retract some of his oppressive personnel policies if the Union were rejected constituted an unlawful promise of benefits in violation of Section 8(a)(1) of the Act. We further find that the Respondent violated Section 8(a)(1) by threatening to cut the wages of nonunit employees if the Union prevailed in an apparent attempt to influence them to persuade unit employees to reject the Union.

8. The complaint alleges that John Corcoran violated Section 8(a)(1) by telling employees who complained about a delay in receiving their paychecks that they could quit if they did not like it. The judge did not analyze the legal effect of Corcoran's statement but said only that ''I make no finding of illegality in Corcoran's reaction to the concerted unhappiness of employees because of this mechanical breakdown.'' The General Counsel excepts to the judge's refusal to find a violation.

The uncontradicted testimony reveals that on Friday, June 23, when the employees requested their paychecks, they were told by Whitlock and John Corcoran that they could not be paid that day because of computer problems. On Monday, June 26, the paychecks still were not ready and the employees complained loudly. Corcoran responded that he still could not get into the computer, and if they did not like it, they could quit.

We find that the employees were engaged in concerted protest over working conditions and that Corcoran's statement to them suggests that the Respondent did not look favorably on group complaints and did not want employees who engaged in such protected concerted activities to work there. Thus, contrary to the judge, we find that his remarks were coercive and constituted a violation of Section 8(a)(1) of the Act.

9. The complaint alleges that, in a conversation with employee Florence Storz, John Corcoran committed several violations of Section 8(a)(1). The judge found that Corcoran unlawfully interrogated her about her union activities, but failed to discuss or make any conclusions concerning whether Corcoran violated the Act by telling Storz that employees were ingrates who were hitting him when he was down, that he did not have to sign a contract, that, before he would do so, he would ''put a key in the door,'' and that he would not seek a line of credit for the business as he had planned because of the Union.

Storz' testimony is uncontradicted that Corcoran made these statements to her. We find that, by stating that the employees were ingrates who were hitting him when he was down, Corcoran equated union activity with disloyalty to the Respondent, and we find that this conduct violated Section 8(a)(1).[10] We also find that Corcoran's statement that he would put the key in the door before he would sign a contract constituted an unlawful threat to close the business, and that his statement that he would no longer seek a line of credit constituted an unlawful threat to reduce business or to close.

10. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by threatening to refuse to bargain in good faith if the employees selected the Union. The judge did not discuss this allegation, and the General Counsel excepts to his failure to find a violation.

The record reveals that on June 13, John Corcoran conducted a meeting of the unit employees at which Corcoran stated that, if the Union came in, the employees could work for minimum wage and he would not pay mileage, and ''if we thought it was bad working there then, it would be twice as bad'' after the elec-

[10] *Southern Illinois Petrol*, 277 NLRB 160, 164, 170 (1985).

tion. The judge found, as alleged, that this statement constituted an unlawful threat to impose more onerous working conditions, but did not discuss the General Counsel's further contention that it was an unlawful threat to refuse to bargain in good faith.

We agree with the judge that the statement constitutes a threat to impose more onerous working conditions. Contrary to the General Counsel's contention, however, we find the evidence does not support a finding that the Respondent, by this statement, threatened to refuse to bargain in good faith. Therefore, this allegation of the complaint is dismissed.

AMENDED CONCLUSIONS OF LAW

1. By dealing directly with unit employees and unilaterally changing their benefits and the compensation system from hourly to piecework rate, and by discontinuing health insurance benefits, without prior consultation with the Union, the Respondent has violated Section 8(a)(5) and (1) of the Act.

2. By discharging Jacqueline Shatrowskas, by instituting a policy that employees could no longer make or receive personal telephone calls, and by failing to pay the employees for the Memorial Day holiday, the Respondent has violated Section 8(a)(3) and (1) of the Act.

3. By soliciting employee grievances and complaints, by threatening employees with discharge, by threatening to cease financial contributions to the business, by telling employees that the Respondent would ''screw'' them because of their complaints to the U.S. Labor Department, by interrogating employees about their union activity, whether they had signed cards, or who the prounion employees were, by promising employees improved terms and conditions of employment for voting against the Union, by threatening to reduce the wages of nonunit employees, by telling employees they could quit in response to their concerted complaints about a delay in their paychecks, by threatening to close the business or not to seek financing for the business, by telling an employee that her support for the Union constituted disloyalty, by telling an employee she was discharged because of her union activity, by threatening to reduce wages and unfavorably change other terms and conditions of employment in retaliation for union activities, and by promising to improve conditions of employment in return for rejecting the Union, the Respondent has engaged in violations of Section 8(a)(1) of the Act.

AMENDED REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. Because the violations of the Act committed by the Respondent are widespread and of such an egregious nature that they evidence a general disregard for its employees' statutory rights, we find that a broad injunctive order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

Discriminatee Jacqueline Shatrowskas has declined the Respondent's offer of reinstatement. We shall, however, order that she be made whole, with interest, for any loss of earnings or benefits she may have suffered to that point as a result of the unlawful discrimination against her. Backpay shall be computed in accordance with the formula set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950).

We shall order that the Respondent recognize and bargain with District 1199P, National Union of Hospital and Health Care Employees, AFL–CIO. The Respondent shall reinstate the employees' health insurance coverage and make employees whole for any losses they may have suffered because of its discontinuance, plus interest. See *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). The Respondent shall compensate the employees for the Memorial Day holiday, plus interest, and rescind its rule prohibiting personal phone calls.

Concerning the unlawfully negotiated individual contracts, the normal remedy for unilateral changes is a make-whole order. However, the Board does not require that employees forgo increases in wages and benefits. As it is not clear whether the change in compensation from hourly rate to piecework was a detriment or a benefit to the employees, we shall issue a restoration order conditioned on the affirmative desires of the affected employees as expressed through their bargaining agent. *Dura-Vent Corp*., 257 NLRB 430 (1981); *Kendall College*, 228 NLRB 1083 (1977), enfd. 570 F.2d 216 (7th Cir. 1978). If the change to a piecework compensation system resulted in a loss of earnings to affected employees, at the Union's request the Respondent shall make employees whole, with interest, for any losses they may have suffered, based on the difference between what the employees would have earned under their hourly rates and what they earned under the piecework plan.

Interest on all sums due herein shall be calculated in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, House Calls, Inc., House Calls Home Health Agency, Inc., House Calls Home Health Care, Inc., Northeast Diagnostic Services, Inc., and Dura-Med, Inc., Kingston and West Pittston, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with District 1199P, National Union of Hospital and Health Care Employees, AFL–CIO as the exclusive representative of its employees in the following appropriate unit:

> All registered nurses, occupational therapists, quality assurance nurses, licensed practical nurses, home health aides, and home health aide coordinators employed by House Calls, Inc., excluding all office secretaries, plant operation employees, payroll clerks, computer billers, operators, administrative assistants, guards and supervisors as defined in the Act.[11]

(b) Dealing directly with unit employees as to terms and conditions of employment and unilaterally changing their wages and benefits.

(c) Discontinuing employee health insurance coverage without prior consultation with the Union.

(d) Discharging or otherwise discriminating against any employee for supporting a union.

(e) Instituting a policy by which employees could no longer make or receive personal phone calls in retaliation for their union activity.

(f) Failing to pay the employees for holidays because of their union activity.

(g) Soliciting employee grievances and complaints with a view toward adjusting them.

(h) Threatening employees with discharge because of their union activity.

(i) Threatening to cease financial contributions to the business because of employee union activity.

(j) Threatening unspecified reprisals because of employee protected concerted activity.

(k) Interrogating employees about their union activity, whether they had signed cards, or who started or supported the Union.

(l) Promising employees improved terms and conditions of employment for voting against the Union.

(m) Threatening to reduce the wages of nonunit employees if the Union prevailed in a Board election.

(n) Telling employees they could quit in response to their protected concerted activity.

(o) Threatening to close the business or not seek financing.

(p) Telling employees that their support for the Union constitutes disloyalty.

(q) Telling employees that they are being discharged for union activity.

(r) Threatening to reduce wages and unfavorably change other terms and conditions of employment in retaliation for union activities.

(s) Promising to improve conditions of employment in return for rejecting the Union.

(t) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if an agreement is reached, embody the understanding in a signed agreement.

(b) If the Union so desires, rescind and cease giving effect to the piecework contracts individually negotiated with employees.

(c) If the Union so desires, make whole the employees subject to piecework contracts for any losses of wages and other benefits they may have suffered in the manner set forth in the remedy section of this Decision and Order.

(d) Reinstate the employees' health insurance coverage and make them whole, with interest, for any losses they may have suffered because of its discontinuance.

(e) Make the employees whole, with interest, for any losses they may have suffered because of the failure to pay holiday pay.

(f) Make whole Jacqueline Shatrowskas for any loss of earnings and other benefits resulting from her discriminatory discharge, in the manner set forth in the remedy section of this Decision and Order.

(g) Remove from its files any reference to the unlawful discharge and notify Shatrowskas in writing that this has been done and that the discharge will not be used against her in any way.

(h) Rescind the policy prohibiting personal phone calls.

(i) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(j) Post at its places of business in Wilkes-Barre, Pennsylvania, copies of the attached notice marked ''Appendix.''[12] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the no-

[11] In the appendix, the judge described the unit to include the employees of the companies other than House Calls, Inc. The election and certification pertained only to House Calls employees. Therefore, we correct the judge's erroneous expansion of the unit.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

tices are not altered, defaced, or covered by any other material.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with District 1199P, National Union of Hospital and Health Care Employees, AFL–CIO as the exclusive representative of the employees in the following appropriate unit:

> All registered nurses, occupational therapists, quality assurance nurses, licensed practical nurses, home health aides, and home health aide coordinators employed by House Calls, Inc., excluding all office secretaries, plant operation employees, payroll clerks, computer billers, operators, administrative assistants, guards and supervisors as defined in the Act.

WE WILL NOT deal directly with unit employees as to terms and conditions of employment or unilaterally change their wages and benefits.

WE WILL NOT discontinue employee health insurance coverage without prior consultation with the Union.

WE WILL NOT discharge or otherwise discriminate against any employee for supporting a union.

WE WILL NOT institute a policy by which employees may no longer make or receive personal phone calls in retaliation for their union activity.

WE WILL NOT fail to pay employees for holidays because of their union activity.

WE WILL NOT solicit employee grievances and complaints with a view toward adjusting them.

WE WILL NOT threaten employees with discharge because of their union activity.

WE WILL NOT threaten to cease financial contributions to the business because of employee union activity.

WE WILL NOT threaten unspecified reprisals because of employee protected concerted activity.

WE WILL NOT interrogate employees about their union activity, whether they signed union cards, or who started or supported the Union.

WE WILL NOT promise employees improved terms and conditions of employment for voting against the Union.

WE WILL NOT threaten to reduce the wages of nonunit employees if the Union prevails in a Board election.

WE WILL NOT tell employees they can quit in response to their protected concerted activity.

WE WILL NOT threaten to close the business or fail to seek financing.

WE WILL NOT tell employees that their support for the Union constitutes disloyalty.

WE WILL NOT tell employees that they are being discharged for union activity.

WE WILL NOT threaten to reduce wages and unfavorably change other terms and conditions of employment in retaliation for union activities.

WE WILL NOT promise to improve conditions of employment in return for rejecting the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment and, if agreement is reached, embody the understanding in a signed agreement.

WE WILL, if the Union so desires, rescind and cease giving effect to the piecework contracts individually negotiated with employees.

WE WILL, if the Union so desires, make whole, with interest, the employees subject to piecework contracts for any losses they may have suffered.

WE WILL reinstate the employees' health insurance coverage and make them whole, with interest, for any losses they may have suffered because we discontinued it.

WE WILL make the employees whole, with interest, for any losses they may have suffered because of our failure to pay holiday pay.

WE WILL make whole, with interest, Jacqueline Shatrowskas' for any loss of earnings and other benefits resulting from her discriminatory discharge.

WE WILL remove from our files any reference to Shatrowskas unlawful discharge and notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL rescind our policy prohibiting personal phone calls.

HOUSE CALLS, INC., HOUSE CALLS HOME HEALTH AGENCY, INC., HOUSE CALLS HOME HEALTH CARE, INC., NORTHEAST DIAGNOSTIC SERVICES, INC, AND DURA-MED, INC.

Robert P. Heller, Esq. and *Peter Verrochi, Esq.*, for the General Counsel.
Mr. John Corcoran and *Irene Whitlock* of West Pittston, Pennsylvania, for the Respondent.
Mr. Steve Williamson of State College, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Adminstrative Law Judge. A hearing in this proceeding was held at Wilkes-Barre, Pennsylvania, on May 22, 23, and 24, 1990, on complaint of the General Counsel against five named companies: House Calls, Inc., House Calls Home Health Agency, Inc., House Calls Home Health Care, Inc., Northeast Diagnostic Services, Inc., and Dura Med, Inc. (a single employer in the complaint). The complaint issue on February 28, 1990, on charges filed by District 1199P, National Union of Hospital and Health Care Employers, AFL–CIO, on various dates between May 30 and August 14, 1989. Thereafter the Respondent filed an answer in which it contradicted the essential allegations of wrongdoing. Briefs were filed after the close of the hearing by the General Counsel and the Respondent.

On the entire record, and from my observation of the witnesses, I make the following

FINDING OF FACTS

I. THE BUSINESS OF THE RESPONDENT

House Calls, Inc. and the other four companies named in the complaint are engaged in the provision of health care services including nursing, physical therapy, respiratory therapy, speech therapy, and personal care services, with offices at Kingston, and West Pittston, Pennsylvania. The answer admits that the Respondents, meaning all five of the separate companies called a single employer in the complaint, annually receive gross revenue in excess of $500,000. It also admits that the Respondent in the course of its business purchases and receives products, goods, and material valued in excess of $10,000 from other enterprises, located within the Commonwealth of Pennsylvania, each of which other enterprises received the products, goods, and material directly from point outside the Commonwealth of Pennsylvania.

I find that the Respondent is an employer within the meaning of the statute.

II. THE LABOR ORGANIZATION INVOLVED

I find that District 1199P, National Union of Hospital and Health Care Employees, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The central person involved in the operation of the Respondent in this case is a man named John Corcoran. For several years he has been the direct operational manager of each of the five separate corporations which together constitute a single employer. Early in 1989 the Union filed an election petition naming House Calls, Inc. as the Employer. With the Employer's agreement an election was held on July 7, 1989, which the Union won, and on July 19 the Union was certified by the Board as its exclusive representative. The unit was there described as:

> Included, all registered nurses, occupational therapists, quality assurance nurses, licensed practical nurses, home health aides, and home health aide coordinators employed by House Calls, Inc., and its Kingston, Pennsylvania facility. Excluded: All office secretaries, plant operation employees, payroll clerks, computer billers, operators, and administrative assistants, guards and supervisors as defined in the Act.

As it became clear that Corcoran was running his business under a variety of corporate names, the complaint here to be considered lists four other separate names and called all a single employer or, a single respondent. John Corcoran personally filed an answer to the complaint, in which he denied each of the asserted allegations of wrongdoing and, especially significant, the allegation that the five named corporations constitute a single employer. Another significant allegation which Corcoran also denied is that he, the administrator, Irene Whitlock, fiscal director, Kimberly Coley, assistant to the administrator, and Debra Ludden, director of professional services, are supervisors within the meaning of the Act and agents of the Respondent.

In preparation for the hearing the General Counsel served on the Respondent subpoenas relating to the ownership of, organizational structure and managerial control of, supervisors and employees of, and business and financial interrelationship among all five companies. The Respondent refused to produce the subpoened documents. Further, Corcoran refused to answer questions put to him by the General Counsel relating to Health Care Agency, Home Health Care, Northeast and Dura-Med., the four affiliated companies listed in the complaint.

Four other representatives of the Respondent also were called to testify by the General Counsel. They refuse to answer any questions put to them. These were: Irene Whitlock, Kimberly Coley, Lelia Corcoran, and Art Masteller. They stated as grounds for their refusal to talk:

Kimberly Corcoran: ''Because I do not want to incriminate myself in any way or my husband in any way.''

Lelia Corcoran:

> I am going to have to say that without my attorney present, I am not going to answer anything else.
>
> Q. Well, let me ask you Ms. Corcoran, are you willing to answer questions about the business structure of House Calls, Incorporated?
>
> A. No, I am not.
>
> Q. Are you willing to testify about what you know about the business structure?
>
> A. No.

Irene Whitlock:

> Q. Ms. Whitlock, do you currently hold any position with House Calls, Inc.?
>
> A. I prefer not to answer without the presence of an attorney . . . .
>
> Q. Okay, will you answer any questions at all?
>
> A. Not without my attorney.

Arthur Masteller:

> Q. Mr. Masteller, were you at one time employed by House Calls, Incorporated?
>
> A. Sir, I respectfully decline to answer any questions on the advice of my attorney . . . .
>
> Q. But is that accurate Mr. Masteller, that you are asserting a Fifth Amendment Right, against incriminating yourself?
>
> A. Yes, sir that is correct.

Kimberly Coley:

> Q. Ms. Coley, were you at one time employed by House Calls, Incorporated?
>
> A. Mr. Verrochi, on the advice of my counsel, I cannot answer those questions on the grounds that it might incriminate me.

When, 2 days later, the General Counsel rested his case, John Corcoran, for the Respondent, called two witnesses—Irene Whitlock and Kimberly Corcoran, his wife. The General Counsel objected to the procedure on the grounds that having refused to testify for the General Counsel those witnesses should not be permitted to speak for the Respondent in defense. I sustain his objection. On second thought the General Counsel withdrew that objection and stated clearly that the Respondent was free to call any witness he wished. At that point, the Respondent chose not to call any witness at all and rested his defense with no witness testifying.

With not a word of the relevant testimony contradicted in this fashion by the Respondent, it follows that the story as detailed by the General Counsel's witnesses is to be believed. *Auto Workers v. NLRB*, 459 F.2d 1329 (D.C. Cir. 1972). *Suburban Food*, 248 NLRB 364 (1980).

The documents in evidence show that between 1985 and May 1988 John Corcoran personally incorporated four of the named companies and was the sole owner of their stock. Together with two other persons he also incorporated the company called House Calls, of which he owned one-third of its stocks. He also admitted that at one time or another he was the administrator for each of the five companies.

The business of each of these companies is generally called providing health care services. What this means is that they send out experienced nurses and other aides to provide nursing, physical therapy, respiratory therapy, and personal tests of all kind as requested by their physicians, hospitals, and all kinds of medical institutions. The employees mostly go to the homes of the sick people to give them the tests and assistance, as well as in hospital locations. Although Corcoran himself refused to answer questions about exactly what kind of work was furnished by these companies, the testimony of employees called by the General Counsel shows clearly all did the same kind of work.

As to where these companies had their central locations, Corcoran also refuse to speak of that. The record shows nevertheless that all five of them operated out of two locations, one in Kingston and one in West Pittston, both in Pennsylvania. Corcoran lives in one of these locations. The employees did work for more than one of the companies at the same time. Mildred Cannon, a registered nurse on the House Calls payroll, worked as assignment for House Calls Care and Home Health Agency, each of whom then sent her earning statements. The same is true of employee Debra Ludden. These employees of House Calls also testified that they went out on assignment from Dura-Med, another of the five companies.

The billing for services performed in the name of all these companies were recorded and sent out from the office of House Calls. Money was regularly transferred from one company's account to that of another. All company accounts were handled in a single office. Whenever questions arose about sufficient money being available in one account or another, it was always by consulting Corcoran personally that the office girls were told how to transfer cash from one company's account to that of another.

The story goes on and on, with unending details, all uncontradicted, about common supervision, interchange of employees, functional interrelationship, centralize control of labor relations, common ownership, etc. It would be pointless to repeat here all the uncontradicted testimony in support of all these relevant facts, I find that all five of the separately named companies listed in the complaint are a single employer. *All Kind Quilting, Inc*., 226 NLRB 1186 (1976); *Watt Electric Co*., 273 NLRB 655 (1984), and *Professional Eye Care*, 289 NLRB 738 (1988).

The Unfair Labor Practices

I find that the five persons named supervisors or agents of the Respondent in the complaint are in fact supervisors and agents of the Board law. The Respondent's answer denies that any of the five are agents of the companies, but, again, no evidence was offered by the Respondent to offset the direct testimony of the General Counsel's witnesses on this entire question. That John Corcoran part owner and direct manager of each of the five companies, is a supervisor as alleged hardly needs comment.

Irene Whitlock is the Respondent's fiscal director. She appeared at the hearing as a representative of the Respondent. There is direct evidence that she personally hired an employee, Mary Stefanski. Although this lady refused to answer any questions put by the General Counsel when called as a witness her prehearing affidavit reads as follows:

> As Fiscal Director, I had planned to pay employees for Memorial Day . . . I planned to do this without approval from Corcoran. I do certain things like this from time to time.

She later changed her mind and did not pay the employees for the Memorial Day holiday. I find that Irene Whitlock is a supervisor within the meaning of the Act.

Debra Ludden was the Respondent's director of nursing and director of professional services from May 1988 to June 1989. She scheduled patients for treatment and had authority over nurses and health care aidesand actually hired an em-

ployee as a health aide. All this testimony also stands uncontradicted.

Ludden also had authority over occupational therapists and physical therapists. She solicited candidates for employment and personally hired at least two employees. She transferred an employee from one job to another and dealt with employee complaints as to matters such as personality disputes and travel and patient problems. I find that Debra Ludden was a supervisor within the meaning of the Act during the time of the incidents that gave rise to this proceeding.

Kimberly Coley, the assistant administrator, had authority over Ludden. Corcoran's affidavit said that an employee have to consult with him, Ludden or Coley as to disciplinary or punitive decisions. Coley signed the employment contract with employee Ann Gernhart as the ''House Calls, Inc., representative'' as a house health aide. All this testimony also stands uncontradicted, for like the others, Coley too refuse to testify when called to the stand. I find that Kimberly Coley is a supervisor within the meaning of the Act.

Lelia Corcoran is John Corcoran's mother. She performs billing and bookkeeping work. She loaned money to the company a number of times and served as a member of the company's board of director. Corcoran used to tell the employees that his mother use to put money in to expand it. I find that Lelia Corcoran too is a supervisor within the meaning of the Act.

1. On May 19, 1989, Steven Williamson, an organizer for the Union, called at Corcoran's office and presented him with a letter demanding recognization. Corcoran became very angry, raised his voice, and said the man had no right to demand recognition and that ''either he would get the keys and he would take the keys and lock the door.'' This was within hearing of other employees. To other employees recalled precisely that Corcoran said ''before I recognize the Union I will put a key in the door.'' I find that by this statement of Corcoran's the Respondent committed an unfair labor practice in violation of Section 8(a)(1). *Armon Co.*, 279 NLRB 1245 (1986).

2. That same day, shortly after his talk with Williamson, Corcoran told his assistant's to discharge two employees—Jacqueline Shatrowskas and Jennine Edwards. As Ludden, the director of professional services, testified, Kimberly Corcoran, the assistant administrator and supervisor, told her that Corcoran was very upset and ''he wanted to layoff some people and he said that he felt that Jacqueline Shatrowskas and Jennine Edwards started the Union . . . .'' A little later that day Ludden told both these employees that they were being laid off at the end of the day. To Edwards she said, that Corcoran thinks Edward and Shatrowskas started the Union.'' As Edwards recalled it Ludden told her ''John wanted her fired and he thought she was the ring leader.'' Later in the day Edwards was told that she could remain on the job after Corcoran had talked to his lawyer. Shatrowskas lost her job that day.

Not only had Shatrowskas never been told of any possibility of discharge, but Ludden, who was over her in charge, testified clearly that Shatrowskas' work was ''good to excellent.'' More, the Respondent's termination policy states: ''conditions may arise which necessitate the dismissal of an employee or a decrease in working force. Permanent fulltime employees shall be given (2) weeks notice upon termination. Permanent fulltime employees shall be required to give (2) weeks notice of resignation.''

Considering the foregoing clear evidence of illegal intent, the timing, and the fact Shatrowskas had never been told anything before that day about possibility dismissal, I find the discharge of Shatrowskas was an unfair labor practice in violation of Section 8(a)(3) of the Act. The testimony by another company witness that there had been talk about discharging Shatrowskas back in January of that year is meaningless.

I also find, as alleged in the complaint, that the statement by a supervisor to Edwards, that she was to be laid off because of the union activity that was going on, although the lady was not in fact dismissed, was in itself a violation of Section 8(a)(1) of the Act.

3. Again, that same day, Lelia Corcoran, John's mother, said to employee Cecilia White she wanted to know who had initiated the Union and that she wanted them out of the place. If they were unhappy here, she asked, why did they not seek work elsewhere instead of starting ''trouble.'' White's testimony was corroborated by employee Vukovich. Also, Lelia Corcoran affidavit received in evidence, reads as follows:

> What the hell is this about the Union, why would they inflict this on John in addition to all the other troubles, don't they know about all our medicare restrictions, I also said, who every it is who started it why don't they go some place else were there is a union? I said if people went on strike for a raise, how could we reconcile what were asking for with what medicare allows us. I said why didn't they go to John first and say they had a problem if they weren't satisfied? I said I would like to know who the hell started it, I said I didn't care if the company had to get rid of every one and close down, I said if they didn't like the conditions, why didn't they just leave instead of starting this. I said I wouldn't put anymore money in the company until I found out who started the Union.

Such illegal interrogations and threats to reduce the business in retaliation for union activity really were repeated violations of Section 8(a)(1) of the Act, and I so find.

4. There is like testimony by employee Florence Storz. She said, again without contradiction, that Corcoran asked her if she knew anything about the Union, if she had signed a union card, and if she knew who had started the union movement. This testimony too was corroborated by employee Vukovich. It was another pure violation of the statue, interrogation pure and simple with no assurance against reprisal. *Raytheon Co.*, 279 NLRB 254 (1986).

5. There is also evidence of other things the company did, some of them affecting conditions of employment, which the General Counsel contends prove further unfair labor practices. I do not think any of those warrant further findings of illegal conduct here.

The Respondent was having financial difficulties at the time of the event. One day it told the employees that they were no longer permitted to make or receive personal telephone calls in the company's office. One day it moved one of two refrigerators from the facility's kitchen to the nearby office of a supervisor. The refrigerators were used by the

employees to keep their lunches cool. After the move, the employees were still able to use the second refrigerator when the supervisor was out of the room.

The employees in the past took so much time off for lunch each day. No record was kept as to how much time they took. With Government investigators checking on the company's proper or improper compliance with Labor Department Rules about overtime and wage violation, the company told the employees that henceforth an accurate record must be made of the precise times they took off for lunch while at work. When the Labor Department informed Corcoran that he was behind in his overtime and wage payments, he became angry and said if the employees ''screwed him,'' he would ''screw them.''

During the hearing the General Counsel conceded that the change in the lunch hour recording rule was not an unfair labor practice by the Respondent. I reach the same conclusion as to the other details. To reduce the cost of its telephone bills at a time of financial stress is a perfectly understandable thing to do. The slight moving of a single refrigerator—in which blood samples of the patients are kept—did not really inconvenience the employees. And for the owner to feel concerned when the Government examines his books was equally natural, to say nothing of the fact their is no evidence of how that investigation came about, or who provoked it. The General Counsel's speculation cannot take the place of affirmative evidence.

6. At a meeting of the aides, which took place shortly before the July 7 election, Corcoran spoke of how he would react to the election results. He said if the Union were voted in he would reduce the wages to the minimum wage level and remove all fringe benefits, and that however bad things were then they would be worse. He also said other conditions—such as paid holidays off, would be improved if the Union were rejected. His statements—clear threats to impose harsher conditions if the employees persisted in their prounion activity resolve, and a promise to improve their conditions if they voted against the Union—were both pure violations of Section 8(a)(1) of the Act. I so find. *Stop N' Go, Inc*., 279 NLRB 344 (1986).

On or about June 26, there was a delay of several days in paying the employees their scheduled wages because the company's computer, which kept the records, had broken down. Some employees protested the delay, but all were paid as soon as the mechanical failure was remedied. I make no finding of illegality in Corcoran's reaction to the concerted unhappiness of employees because of this mechanical breakdown.

8. When, after the Board's election of July 7, 1989, the Union was established as an exclusive representative of the employees on July 19, 1989, the Respondent, of course, became legally obligated to bargain with the Union. Aside from its deliberate violations of the statue in the repeated attempts to prevent a fair election, Corcoran, acting for all five of the named Respondent companies, ignored the Union and went about his business as though the Union did not exist. His further violations of the statue, clear unfair labor practices under Section 8(a)(5) of the Act, are equal]y clear. When it suited his purpose he changed the hiring arrangement with a number of nurses aides from hourly pay to piecework rate. On occasion, some employees refused to accept the change; others did as they were told and worked under new pay rules set down by Corcoran. As far as he was concerned the Union did not exist. That such unilateral changes in conditions of employment, although ignoring the statutory duty to bargain with the employees chosen representative, was an unfair labor practice hardly needs precedent citation. See only *NLRB v. Katz*, 369 U.S. 736 (1962).

I find that by changing the pay arrangement with its employees without first discussing the subject and bargaining about it with the Union, the Respondent in fact refused to bargain with the Union and thereby violated Section 8(a)(5) of the Act.

9. Another direct violation of Section 8(a)(5) was the Respondent's discontinuance, 2 days after the Union's certification, of health insurance benefits the employees had long enjoyed. On July 31, 1989, Corcoran posted a notice that henceforth the Blue Cross-Blue Shield Group Insurance was being completely discontinued, and that if the employees so desired, they could pay for it themselves.

At the hearing Corcoran seemed to argue, in defense, that his reason for doing that was only that he could not afford the expense.

It was an insufficient defense. Corcoran never talked of the subject with the Union. That it was a substantial change in conditions of employment hardly needs comment. If anything, this discontinuance of benefit appears instead as a direct implementation of Corcoran's clear threats to the employees, that if they voted in favor of the Union their conditions of employment would be worsen. I find that by unilaterally discontinuing the health insurance benefits without first discussing this subject with the Union the Respondent violated Section 8(a)(5) of the Act.

III. THE REMEDY

The Respondent must be ordered to cease and desist from again committing any of the many unfair labor practices found above. It must also be ordered to make whole Jacqueline Shatrowskas for any loss of earnings she suffered because of her illegal discharge. In September 1989 this lady was offered reinstatement by the Employer, but she refused to accept it. Therefore there is no occasion to order reinstatement now.

The Respondent must also be ordered to bargain with the Union henceforth as statue commands. It must make whole any of the employees who may have suffered monetary damages because of the unlawful discontinuance of their health insurance previously supplied by the employer. Equally, the company must restore and reestablish the health insurance for its employees. Finally, the Respondent must be ordered henceforth to bargain with the Union on request in good faith.

The unfair labor practices found in this record are so extensive and pervasive that the final order must also include a directive that the Respondent cease and desist from any other manner henceforth violating the statue.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operation of its regular business, have a close, intimate, and substantial relationship to trade traffic, and commerce among the several States

and tend to lead to labor disputes obstructing commerce and free flow of commerce.

CONCLUSIONS OF LAW

1. By unilaterally changing the compensation system with its employees from hourly to piecework rate, and by discontinuing the established health insurance benefits they long enjoyed, both without prior consultation with their union representative, the Respondent has violated and is violating Section 8(a)(5) of the Act.

2. By discharging Jacqueline Shatrowakas, the Respondent has violated and is violating Section 8(a)(3) of the statue.

3. By foregoing conduct, by telling employees the Respondent will close down its business if the employees persist in their prounion activity, by telling an employees she was being discharged because of her union activity, by questioning employees as to who started the Union activity and who backed it, by questioning employees as to whether they had signed union cards and as to who the prounion employees were, by threatening to reduce wages and other conditions of employment in retaliation for prounion activities, and by promising to improve conditions of employment in return for antiunion activity, the Respondent has engaged in and is engaging in violations of Section 8(a)(1) of the statue.

4. The aforesaid unfair labor practices are unfair labor practice within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]